

**AMERICAN CIVIL LIBERTIES UNION
FOUNDATION OF ARIZONA**

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**UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA**

Fund for Empowerment, *et al.*,
Plaintiffs,

v.

City of Phoenix, *et al.*,
Defendants.

No. CV-22-02041-PHX-GMS

**PLAINTIFFS' RESPONSE TO
DEFENDANTS' EMERGENCY
MOTION FOR CONTINUANCE**

Pursuant to the Court's Order, Plaintiffs hereby file a response to Defendant City of Phoenix's Emergency Motion for Continuance ("the Motion"). The Motion should be denied for the following reasons.

Plaintiffs reasonably fear that constitutional violations due to the lack of meaningful notice will continue absent an order from this Court. City Defendants issued notice for a sweep on May 24, 2023. ECF 59-2. They now contend, without corroboration, that the sweep was delayed to May 31, 2023. City Defendants have produced no evidence that this purported cancellation was communicated to people living in the affected area.

1 Furthermore, they also have not produced any notice of the May 31, 2023 sweep, which
2 should have been issued by May 17, 2023, per the Human Services Campus Enhanced
3 Cleanup Plan (“the Plan”).

4 City Defendants’ failure to communicate the date of upcoming sweeps runs afoul of
5 the notice requirements of the Preliminary Injunction, ECF 34, and the Constitution. To
6 comply with due process, “meaningful” has commonly been found to mean notice sufficient
7 to inform the recipient of a potential deprivation of property. *Rodriguez v. Chen*, No. CV
8 95-130-TUC-RMB, 1996 WL 159810, at *5 (D. Ariz. Feb. 7, 1996) (citing *Goldberg v.*
9 *Kelly*, 397 U.S. 254, 267 (1970)). This includes reasonably apprising the affected person of
10 the action and affording them an opportunity to respond. *Mullane v. Central Hanover Trust*
11 *Co.*, 339 U.S. 306, 314-15 (1950); *see also Pettibone Corp. v. Payne*, 151 B.R. 166, 172–
12 73 (Bankr. N.D. Ill. 1993) (adequate notice requires time “to take meaningful action in
13 response to the impending deprivation....”). Importantly, a written notice apprising
14 unsheltered persons of a clean-up during which deprivations may occur with the incorrect
15 date is “affirmatively misleading” and inadequate notice. *Kincaid v. City of Fresno*, No.
16 106CV-1445 OWW SMS, 2006 WL 3542732, at *38 (E.D. Cal. Dec. 8, 2006).

17 Plaintiffs submitted testimony and pictures showing that no property was tagged
18 during the May 10, 2023 sweep of the Zone, as required by the Plan. ECF 18. The
19 significance of notice cannot be overstated: either every person impacted by the sweep was
20 present to claim their property on May 10, 2023 or the City Defendants destroyed property
21 without tagging, in violation with the Plan. In any event, the lack of tagging underscores
22 the importance of meaningful notice for upcoming sweeps.

23 Additionally, City Defendants’ representation that they would delay the May 24,
24 2023 sweep to May 31, 2023 was limited to the block of 12th Avenue between Washington
25 and Jefferson Streets, leaving the door open to continue constitutional violations in other
26 locations across the city. ECF 59-2. At a minimum, the City should halt all sweeps until this
27 Court issues an order on the constitutionality of their approach.

28 Last, City Defendants were on notice prior to the May 10 sweep that Plaintiffs would

likely challenge their actions if they failed to comply with the requirements of the preliminary injunction. Indeed, on May 8, 2023, Plaintiffs told City Defendants they needed an executed copy of the settlement agreement returned prior to May 12, 2023. Plaintiffs warned that if the settlement was not returned and executed by that date, they would notify the Court of the settlement's failure and seek Defendant's overdue initial disclosure statement. Instead of returning an executed agreement, City Defendants chose to carry out a sweep on May 10, 2023. In other words, City Defendants manufactured this emergency by carrying out an unconstitutional sweep in the middle of settlement negotiations. Coupled with Plaintiffs' warnings, City Defendants should have known it was likely their actions would be challenged and had plenty of time to ensure compliance with the terms of the preliminary injunction or case coverage for any hearing stemming from their actions.

For the forgoing reasons, this court should deny Defendants' request for a continuance.

Dated this 22th day of May, 2023.

By: /s/ Benjamin L. Rundall

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CERTIFICATE OF SERVICE

I hereby certify that on May 22, 2023, I electronically transmitted the attached document to the Clerk's Office using the CM/ECF System for filing, and for transmittal of a Notice of Electronic Filing to all CM/ECF Registrants.

/s/ Benjamin L. Rundall
Benjamin L. Rundall